



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/028,086	12/21/2001	Robert E. Denman	22171.299	1095
27683	7590	03/23/2006	EXAMINER	
HAYNES AND BOONE, LLP 901 MAIN STREET, SUITE 3100 DALLAS, TX 75202			PHILLIPS, HASSAN A	
		ART UNIT	PAPER NUMBER	
		2151		
DATE MAILED: 03/23/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/028,086	DENMAN ET AL.
	Examiner Hassan Phillips	Art Unit 2151

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 27 December 2005.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-36 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-36 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 27 December 2005 is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
    Paper No(s)/Mail Date \_\_\_\_\_.  
4)  Interview Summary (PTO-413)  
    Paper No(s)/Mail Date. \_\_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_.  
\_\_\_\_\_

### **DETAILED ACTION**

1. This action is in response to communications filed on December 27, 2005.

#### ***Drawings***

2. After consideration of the amendments made to the drawings to include the reference numeral (26), Examiner has withdrawn the objection to the drawings.

#### ***Specification***

3. Examiner has received and considered the amendments made to the specification. Examiner would like to thank Applicant for checking and correcting all minor errors in the specification.

#### ***Claim Objections***

4. After consideration of the amendments made to claim 2, to correct a minor informality, Examiner has withdrawn the objection to claim 2.

#### ***Claim Rejections - 35 USC § 112***

5. After consideration of the amendments to claim 2 to comply with the written description requirement, Examiner has withdrawn the rejection to claim 2 under 35 U.S.C. 112, first paragraph.

6. After consideration of the amendments made to claims 15, 26, and 36, to correct insufficient antecedent basis issues, Examiner has withdrawn the rejection to claims 15, 26, and 36 under 35 U.S.C. 112, second paragraph.

***Response to Arguments***

7. Applicant's arguments filed December 27, 2005 have been fully considered but they are not persuasive. Applicant argued that:

- a) Maggenti does not disclose "a PTT Server operable to function as a call endpoint for each of a plurality of mobile devices" nor a PTT server "operable to multicast a communication from one member of the group to the other members of the group";
- b) Maggenti does not disclose a method of registering a contact for a user "for media transmissions to other users in the group" wherein the contact for the user "is the PTT Server";
- c) Maggenti does not disclose a method of "receiving, by the PTT server, a half-duplex speech communication from the mobile device" or "multicasting the half-duplex speech communication from the PTT Server to other members of a group"; and,
- d) Examiner did not establish a *prima facie* case of obviousness since Maggenti does not teach "redirecting the SIP SUBSCRIBE to a PTT Server for purposes of removing the calling party and the called party from a multicast group".

Examiner respectfully disagrees with Applicant's assertions and submits that Applicant has misinterpreted the prior art of record.

8. Regarding item a), while the Examiner believes the previously cited passages of Maggenti clearly suggest Applicant's claimed limitations "a PTT Server operable to function as a call endpoint for each of a plurality of mobile devices" and a PTT Server "operable to multicast a communication from one member of the group to the other members of the group", for the sake of argument, Examiner directs Applicant to further teachings of Maggenti where it is expressly disclosed that a PTT Server (218) is operable to function as a call endpoint for each of a plurality of mobile devices and operable to multicast a communication from one member of a group to other members of a group, (Maggenti, col. 6, line 62 through col. 7, line 14). In this passage the PTT Server functions as a call endpoint for a plurality of mobile devices since it receives calls from mobile devices and then provides information from the calls to other devices by duplicating the information and sending it on to the other devices. Given this teaching of Maggenti, it should be even more clear to Applicant that in the previously cited passage, (Maggenti, col. 22, lines 45-58), Maggenti discloses the PTT Server is operable to multicast a communication from one member of the group to the other members of the group since the "duplicated information" originates from the PTT Server.

9. Regarding item b), Examiner respectfully submits Maggenti discloses a method of registering a contact for a user “for media transmissions to other users in the group” wherein the contact for the user “is the PTT Server” (Maggenti, col. 10, lines 46-55), because the cited passage indicates in order to participate in transmissions to other users in the group a user initially requests the PTT Server to add the user to a group of users who have already registered with the PTT Server. It is inherent in the cited passage that the PTT Server is the contact for the user because a user will initially know or be able to learn the group address of any group it wishes to participate in from the PTT Server, (Maggenti, col. 10, lines 20-55).

10. Regarding item c), Applicant acknowledges Maggenti discloses supporting a half-duplex point-to-point call instigated by a user of a mobile device by pressing a push-to-talk button, (Maggenti, col. 20, lines 26-30). For reasons previously indicated with regards to item a), Examiner further submits it is clear in the teachings of Maggenti that a half-duplex speech communication from the mobile device is received by the PTT server and the PTT Server multicasts the half-duplex speech communication to other members of a group, (Maggenti, col. 6, line 62 through col. 7, line 14, and col. 22, lines 45-58).

11. Regarding item d), Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so

found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the teachings of Maggenti suggest a means for redirecting a SIP SUBSCRIBE to the PTT server for purposes or removing the calling party and the called party from a multicast group, (col. 6, line 62-col. 7, line 7, col. 20, lines 26-30, col. 25, lines 51-57). Thus, if not implicit in the teachings of Maggenti, it would have been obvious to a person of ordinary skill in the art to modify the teachings of Maggenti to show redirecting a SIP SUBSCRIBE to the PTT server for purposes or removing the calling party and the called party from a multicast group. This would have advantageously provided a means for supporting a private call between a calling party and a called party, (Maggenti, col. 20, lines 26-30).

12. Accordingly the references supplied by the examiner in the previous office action covers the claimed limitations. The rejections are thus sustained. Applicant is requested to review the prior art of record for further consideration.

#### ***Claim Rejections - 35 USC § 102***

13. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the

applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

14. Claims 1-19, 23, 35, are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Maggenti et al. (hereinafter Maggenti), U.S. Patent 6,477,150.

15. In considering claim 1, Maggenti teaches a wireless communication network including push-to-talk (PTT) functionality, comprising: a Session Initiation Protocol (SIP) Proxy Server (218), (col. 5, lines 38-55, Fig.'s 2 and 6); a SIP Registrar and Location Server (218) operable to store contact addresses of active mobile devices, (col. 7, lines 15-28, Fig.'s 2 and 6); a PTT Server (218) operable to function as a call endpoint for each of a plurality of mobile devices wherein the plurality of mobile devices are segmented into membership groups, the PTT Server further operable to multicast a communication from one member of the group to the other members of the group, (col. 4, line 49-col. 5, line 46, col. 22, lines 45-58, Fig.'s 2 and 6); and an Internet Protocol (IP) network (214) interconnecting the SIP Proxy server, the SIP Registrar and Location Server, and the PTT Server, (col. 15, lines 28-37, Fig.'s 2 and 6).

16. In considering claim 2, Maggenti teaches the PTT server operates as a signaling endpoint and a back-to-back user agent, (col. 6, line 62 through col. 7, line 14, and col. 20, lines 49-57, Fig. 6).

17. In considering claim 3, Maggenti teaches a subscriber database operable to store subscriber data, (col. 7, lines 15-28, Fig. 6).

18. In considering claim 4, Maggenti teaches a radio access network operable to wirelessly link the plurality of mobile devices to the IP network, (col. 6, lines 24-47, Fig. 2).

19. In considering claim 5, Maggenti teaches a method for user activation of push-to-talk (PTT) service in a wireless communication network, comprising: initiating a session with a PTT server wherein a user joins a group, (col. 10, lines 46-55); registering a contact for the user for media transmissions to other users in the group, (col. 10, lines 46-55); wherein the contact for the user is the PTT server, (col. 10, lines 46-55).

20. In considering claim 6, Maggenti teaches the group being closed with pre-provisioned members, (col. 10, line 56- col. 11, line 6).

21. In considering claim 7, Maggenti teaches the group being open whereby any user can join, (col. 10, line 56- col. 11, line 6).

22. In considering claim 8, Maggenti teaches initiating a session including invoking a SIP INVITE process, (col. 11, lines 52-59).

23. In considering claim 9, Maggenti teaches a To header of the SIP INVITE including a group specific Uniform Resource Locater, (col. 25, lines 12-28).

24. In considering claim 10, Maggenti teaches registering a contact for the user (col. 10, lines 46-55). Maggenti also teaches operating over the SIP protocol, (col. 7, lines 39-57). Thus, it is inherent in the teachings of Maggenti that registering a contact for the user includes invoking a SIP REGISTER process, since SIP REGISTER is a conventional method.

25. In considering claim 11, Maggenti teaches registering a contact for the user including registering a group specific Uniform Resource Locator, (col. 10, lines 46-55).

26. In considering claim 12, Maggenti teaches the PTT server functioning as a SIP user agent server (col. 11, line 60-col. 12, line 2), and as a multicast router (col. 22, lines 51-58).

27. In considering claim 13, Maggenti teaches the contact for the user being a SIP URL for the group in the PTT server, (col. 26, lines 5-43).

28. In considering claim 14, Maggenti teaches initiating a session with the PTT server including the PTT server adding the IP address of the user's mobile device to a multicast group, (col. 10, lines 46-55).

29. In considering claims 15 and 35, Maggenti teaches a method for push-to-talk (PTT) group calls for users in a wireless communication network, comprising: receiving at a PTT server from a mobile device to request the group's speech token, (col. 6, lines 11-23); transmitting an acknowledge message to the mobile device from the PTT Server wherein the acknowledge message includes a speech token, (col. 6, lines 11-23); receiving by the PTT server, a half-duplex speech communication from the mobile device, (col. 20, lines 26-30); multicasting the half-duplex speech communication from the PTT server to other members of a group, (col. 4, lines 49-59, col. 22, lines 51-58); releasing the speech token, (col. 6, lines 11-23); and notifying the group members that the speech token is available, (col. 6, lines 11-23, col. 31, lines 38-48). Maggenti also teaches operating over the SIP protocol, (col. 7, lines 39-57). Thus, it is inherent in the teachings of Maggenti that a SIP SUBSCRIBE is transmitted to the PTT server from the mobile device to request the group's speech token, since SIP SUBSCRIBE is a conventional method.

30. In considering claim 16, it is inherent in the teachings of Maggenti that multicasting includes use of a Class D Multicast address, (col. 4, lines 49-59, col. 22, lines 51-58).

31. In considering claim 17, Maggenti teaches the multicasting including use of network address and port translation by the PTT server, whereby the PTT server replaces a destination IP address of a port number of received speech packets with an IP address of a port number of each target user and unicasts modified packets to each target user, (col. 6, line 62-col. 7, line 7).

32. In considering claim 18, Maggenti teaches authorizing priority members to pre-empt any other group member who has been granted the speech token, (col. 30, line 63-col. 31, line 9).

33. In considering claim 19, Maggenti teaches identifying the caller to target users, (col. 12, line 64-col. 13, line 11).

34. In considering claim 23, Maggenti teaches sending a releasing member the status of the token in the response to the releasing SUBSCRIBE request, (col. 31, lines 38-59).

#### ***Claim Rejections - 35 USC § 103***

35. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

36. Claims 20-22, 24-34, 36, are rejected under 35 U.S.C. 103(a) as being unpatentable over Maggenti.

37. In considering claim 20, although the teachings of Maggenti disclose substantial features of the claimed invention, they fail to expressly disclose: SIP INFO and NOTIFY messages being used to convey a calling party ID.

Nevertheless, INFO and NOTIFY messages are conventional SIP messages and were well known in the art at the time of the present invention for mid-call signaling information exchanging, and event notification after an explicit/implicit subscription, respectively.

Thus, it would have been obvious to a person of ordinary skill in the art to modify the teachings of Maggenti to show SIP INFO and NOTIFY messages being used to convey a calling party ID. This would have advantageously provided a conventional means for identifying callers to target users, (Maggenti, col. 12, line 64-col. 13, line 11).

38. In considering claims 21 and 30, although the teachings of Maggenti disclose substantial features of the claimed invention, they fail to expressly disclose: sending a SIP INFO message indicating the speech token is available.

Nevertheless, INFO messages were well known in the art at the time of the present invention for mid-call signaling information exchanging.

Thus, it would have been obvious to a person of ordinary skill in the art to modify the teachings of Maggenti to show sending a SIP INFO message indicating the speech token is available. This would have advantageously provided a conventional means for notifying group members that a speech token is available, (Maggenti, col. 6, lines 11-23, col. 31, lines 38-48).

39. In considering claims 22 and 31, although the teachings of Maggenti disclose substantial features of the claimed invention, they fail to expressly disclose: sending a SIP NOTIFY message indicating the speech token is available.

Nevertheless, NOTIFY messages were well known in the art at the time of the present invention for event notification after an explicit/implicit subscription.

Thus, it would have been obvious to a person of ordinary skill in the art to modify the teachings of Maggenti to show sending a SIP NOTIFY message indicating the speech token is available. This would have advantageously provided a conventional means for notifying group members that a speech token is available, (Maggenti, col. 6, lines 11-23, col. 31, lines 38-48).

40. In considering claims 24 and 32, although the teachings of Maggenti disclose substantial features of the claimed invention, they fail to expressly disclose: notifying the group members that the speech token is available including multicasting a pre-stored tone from the PTT server.

Nevertheless, Maggenti teaches notifying the group members that the speech token is available, (col. 31, lines 38-48), and notifying a requesting group member that a speech token has been granted by means of a pre-stored tone, (col. 6, lines 11-23).

Thus, it would have been obvious to a person of ordinary skill in the art to modify the teachings of Maggenti to show notifying the group members that the speech token is available including multicasting a pre-stored tone from the PTT server. This would have advantageously allowed for group members to audibly determine whether the speech token was available, (Maggenti, col. 6, lines 11-23, col. 31, lines 38-48).

41. In considering claim 25, although the teachings of Maggenti disclose substantial features of the claimed invention, they fail to expressly disclose: queuing the request for the speech token until the speech token is available.

Nevertheless, queuing was well known in the art at the time of the present invention. Also, Maggenti teaches denying a request for the speech token until the speech token is available, (col. 5, lines 26-37).

Thus, it would have been obvious to a person of ordinary skill in the art to modify the teachings of Maggenti to show queuing the request for the speech token until the speech token is available, and processing the queued request to acquire the speech token when the speech token becomes available. This would have advantageously allowed for a user to receive the speech token when it becomes available by only pressing the PTT button once, (Maggenti, col. 6, line 47-col. 7, line 7).

42. In considering claims 26 and 36, Maggenti teaches a method for PTT private calls for users in a wireless communications network, comprising: selecting a called party private identification for a private call by a calling party on a mobile device, (col. 20, lines 26-30); selecting a PTT function on the mobile device, (col. 20, lines 26-30); transmitting to request a speech token, (col. 6, lines 11-23); redirecting a request, (col. 25, lines 51-57); receiving an acknowledge message that includes a speech token, (col. 6, lines 11-23); communicating speech packets from the calling party to the called party in a half-duplex manner, (col. 20, lines 26-30); transmitting to release the speech token, (col. 6, lines 11-23); notifying the calling and called parties that the group's speech token is available, (col. 6, lines 11-23, col. 31, lines 38-48). Maggenti also teaches operating over the SIP protocol, (col. 7, lines 39-57). Thus, it is implicit in the teachings of Maggenti that a SIP SUBSCRIBE is transmitted to the PTT server from the mobile device to request the group's speech token, since SIP SUBSCRIBE is a conventional method.

Although the teachings of Maggenti disclose substantial features of the claimed invention, they fail to expressly disclose: redirecting a SIP SUBSCRIBE to the PTT server for purposes or removing the calling party and the called party from a multicast group.

Nevertheless, the teachings of Maggenti provide a means for redirecting a SIP SUBSCRIBE to the PTT server for purposes or removing the calling party and the called party from a multicast group, (col. 6, line 62-col. 7, line 7, col. 20, lines 26-30, col. 25, lines 51-57).

Thus, if not implicit, it would have been obvious to a person of ordinary skill in the art to modify the teachings of Maggenti to show redirecting a SIP SUBSCRIBE to the PTT server for purposes or removing the calling party and the called party from a multicast group. This would have advantageously provided a means for supporting a private call between a calling party and a called party, (Maggenti, col. 20, lines 26-30).

43. In considering claim 27, although the teachings of Maggenti disclose substantial features of the claimed invention, they fail to expressly disclose: transmitting the calling party information using a SIP NOTIFY message.

Nevertheless, NOTIFY messages were well known in the art at the time of the present invention for event notification after an explicit/implicit subscription.

Thus, it would have been obvious to a person of ordinary skill in the art to modify the teachings of Maggenti to show transmitting the calling party information using a SIP NOTIFY message. This would have advantageously provided a conventional means for transmitting calling party information from the PTT Server to the called party, (Maggenti, col. 12, line 64-col. 13, line 11)

44. In considering claim 28, although the teachings of Maggenti disclose substantial features of the claimed invention, they fail to expressly disclose: transmitting the calling party information using an INFO message.

Nevertheless, INFO messages were well known in the art at the time of the present invention for mid-call signaling information exchanging.

Thus, it would have been obvious to a person of ordinary skill in the art to modify the teachings of Maggenti to show transmitting the calling party information using an INFO message. This would have advantageously provided a conventional means for transmitting calling party information from the PTT Server to the called party, (Maggenti, col. 12, line 64-col. 13, line 11).

45. In considering claim 29, the teachings of Maggenti provide a means for sending a response to the SIP SUBSCRIBE that requested releasing of the private-call speech, (col. 31, lines 38-59).

46. In considering claim 33, the teachings of Maggenti provide a means for reinstating the calling party and the called party as part of the group upon termination of the private call, (col. 4, lines 49-59, col. 20, lines 26-30).

47. In considering claim 34, the teachings of Maggenti provide a means for restoring the IP addresses of the parties' mobile device to the group's multicast group, (col. 6, line 62-col. 7, line 7, col. 4, lines 49-59, col. 20, lines 26-30, col. 25, lines 51-57).

### ***Double Patenting***

48. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re*

*Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

49. Claims 1 and 26, are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1 and 37, of copending Application No. 10/137,551. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

50. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

51. Claims 1-5 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5, 16 of copending Application No. 10/028,091. Although the conflicting claims are not identical, they are not patentably distinct from each other because the limitations "a Presence

Server operable to store data on active mobile devices" in claim 1 of the copending application, and "notifying members of the group of other members' presence" in claims 5 and 16 would have been obvious modifications to one of ordinary skill in the art at the time of the present invention.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Conclusion***

**52. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

**53.** Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hassan Phillips whose telephone number is (571) 272-3940. The examiner can normally be reached on M-F 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung can be reached on (571) 272-3939. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HP/  
3/17/06



ZARNI MAUNG  
SUPERVISORY PATENT EXAMINER